

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MIKIE ROSS HANSEN,

Plaintiff,

v.

WASHINGTON STATE,

Defendant.

No. C12-5633 BHS/KLS

ORDER TO AMEND OR SHOW CAUSE

Before the Court is Plaintiff's proposed civil rights complaint. ECF No. 10. Plaintiff is a sex offender who is currently detained in Western State Hospital. Plaintiff brings this lawsuit against the State of Washington seeking "Two Billion or Best Offer." *Id.* The complaint is deficient and will not be served. Plaintiff is directed to show cause why his complaint should not be dismissed for failure to state a claim pursuant to 42 U.S.C. § 1983 or to file an amended complaint.

DISCUSSION

The Court "may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim" upon which relief may be granted. *Wong v. Bell*, 642 F.2d 359, 361 (9th Cir. 1981) (citing 5 C. WRIGHT & A. MILLER, Federal Practice and Procedure, s 1357 at 593 (1969)); see also *Sparling v. Hoffman Construction Co. Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Omar v. Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (court may *sua sponte* invoke Fed. R. Civ. P. 12(b)(6) to dismiss deficient complaint); *Crawford v. Bell*, 599

1 F.2d 890, 893 (9th Cir. 1979). A complaint or portion thereof, will be dismissed for failure to
2 state a claim upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to]
3 raise a right to relief above the speculative level, on the assumption that all the allegations in the
4 complaint are true.” *See Bell Atlantic, Corp. v. Twombly*, 540 U.S. 544, 127 S.Ct. 1955, 1965
5 (2007) (citations omitted). In other words, failure to present enough facts to state a claim for
6 relief that is plausible on the face of the complaint will subject that complaint to dismissal. *Id.* at
7 1974.
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9 The Court must give a plaintiff both “notice of its intention to dismiss” and “some
10 opportunity to respond,” however, unless plaintiff “cannot possibly win relief.” *Sparling*, 864
11 F.2d at 638 (quoting *Wong*, 642 F.2d at 362)). The Court must construe the pleading in the light
12 most favorable to plaintiff and resolve all doubts in plaintiff’s favor. *Jenkins v. McKeithen*, 395
13 U.S. 411, 421 (1969).
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15 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, “the complaint [must
16 provide] ‘the defendant fair notice of what the plaintiff’s claim is and the ground upon which it
17 rests.’” *Kimes v. Stone* 84 F.3d 1121, 1129 (9th Cir. 1996) (citations omitted). In addition, in
18 order to obtain relief against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that the
19 particular defendant has caused or personally participated in causing the deprivation of a
20 particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).
21 To be liable for “causing” the deprivation of a constitutional right, the particular defendant must
22 commit an affirmative act, or omit to perform an act, that he or she is legally required to do, and
23 which causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).
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25 Plaintiff’s entire complaint consists of the following allegations:
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1 “File charge and follow up with a law suite [sic]. Two Billion or best offer charges must
2 have two [sic] be registered sex offender Sandy is here name.... Discrimination.” ECF No. 10,
3 p. 3.

4 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (i) the conduct
5 complained of was committed by a person acting under color of state law and (ii) the conduct
6 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the
7 United States. *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 687 L.Ed.2d 420 (1981),
8 *overruled on other grounds, Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the
9 appropriate avenue to remedy an alleged wrong only if both of these elements are present.
10 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985).

11 Plaintiff has failed to state a claim upon which relief may be granted. He has failed to
12 state what person, acting under color of state law, deprived him of any constitutional right. His
13 complaint is devoid of any allegations whatsoever.

14 In addition, the only defendant named is the State of Washington, which must be
15 dismissed. The State of Washington is not considered a “person” for purposes of 42 U.S.C. §
16 1983 because it has not waived sovereign immunity for damages actions. See *Howlett v. Rose*,
17 496 U.S. 356, 365 (1990); *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989).

18 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
19 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
20 explaining why this matter should not be dismissed no later than **October 26, 2012**. If Plaintiff
21 chooses to amend his complaint, he must demonstrate how the conditions complained of have
22 resulted in a deprivation of his constitutional rights. The complaint must allege in specific terms
23 how each named defendant is involved. The amended complaint must set forth all of Plaintiff’s
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1 factual claims, causes of action, and claims for relief. Plaintiff shall set forth his factual
2 allegations **in separately numbered paragraphs** and shall allege with specificity the following:

3 (1) the names of the persons who caused or personally participated in causing the
4 alleged deprivation of his constitutional rights;

5 (2) the dates on which the conduct of each Defendant allegedly took place; and

6 (3) the specific conduct or action Plaintiff alleges is unconstitutional.
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8 The amended complaint will act as a complete substitute for the original. Therefore,
9 reference to a prior pleading or another document is unacceptable – once Plaintiff files an
10 amended complaint, the original pleading or pleadings will no longer serve any function in this
11 case. Therefore, each claim and the involvement of each defendant must be sufficiently alleged
12 in the amended complaint.

13 Plaintiff shall present his complaint on the form provided by the Court. The amended
14 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
15 copy, it may not incorporate any part of the original complaint by reference, it must be clearly
16 labeled the “Amended Complaint”, and it must contain the same cause number as this case.
17 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
18 pages as needed but may not attach a separate document that purports to be his amended
19 complaint. **Plaintiff is advised that he should make a short and plain statement of claims**
20 **against the defendants. He may do so by listing his complaints in separately numbered**
21 **paragraphs. He should include facts explaining how each defendant was involved in the**
22 **denial of his rights.**
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25 The Court will screen the amended complaint to determine whether it contains factual
26 allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will

1 not authorize service of the amended complaint on any Defendant who is not specifically linked
2 to the violation of Plaintiff's rights.

3 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
4 that if the amended complaint is not timely filed or if he fails to adequately address the issues
5 raised herein on or before **October 26, 2012**, the Court will recommend dismissal of this action.
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7 **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.**
8 **1983 civil rights complaint and for service. The Clerk is further directed to send a copy of**
9 **this Order and a copy of the General Order to Plaintiff.**

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11 **DATED** this 24th day of September, 2012.

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14 Karen L. Strombom
15 United States Magistrate Judge
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